

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO.101/2014

Shri Vasant Rao Gulabrao Darokar
...Versus...
Sou. Hemlata w/o Vasant Rao Darokar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.S. Sadavarte, Advocate for applicant
Shri S.M. Nafde, Advocate for non-applicant

CORAM : Z.A. HAQ, J.
DATE : 06.02.2015

1. Heard the learned Advocates for the respective parties.
2. The applicant is challenging the order passed by the learned District Judge condoning the delay of 101 days in filing the appeal.
3. The applicant filed petition under Section 9 of the Hindu Marriage Act, 1955 which was dismissed by the learned trial Judge by the judgment dated 11.9.2003. The non-applicant being aggrieved by the judgment passed by the trial Court filed appeal which came to be allowed and the matter was remitted to the trial Court for fresh trial. The District Judge while remanding the matter directed the parties to appear before the trial Court on 7.3.2009. It is the case of the non-applicant that she had gone to the Court on 7.3.2009, however, the matter was not on board and on queries, the concerned clerk told her that she will receive

notice from the Court about the date on which the matter is fixed and accordingly she had not taken any further steps in the matter. It is the case of the non-applicant that on 7.3.2009 her Advocate was not in Nagpur and therefore, she could not contact him also.

The learned trial Judge proceeded with the matter *ex parte* and by the judgment dated 8.5.2009 allowed the petition. The non-applicant being aggrieved by the judgment passed by the trial Court filed appeal and as there was delay in filing the appeal, an application under Section 5 of the Limitation Act was also filed. The learned District Judge has condoned the delay in filing the appeal. The applicant being aggrieved by the order passed by the learned District Judge has filed this civil revision application.

4. Shri Sadavarte, the learned Advocate for the applicant has submitted that the applicant has stated on oath in the reply filed by him to the application praying for condonation of delay that on 7.3.2009 he had seen the non-applicant in the Court premises and he had informed her that the matter was in the Court of 3rd Jt. Civil Judge, Senior Division on 4th floor, presided by Shri Dixit. Considering the pleadings of the respective parties the learned District Judge felt it necessary to record the evidence of the parties and accordingly the matter was fixed for recording of evidence. However, the non-applicant refused to enter the witness box and filed pursis (Exh.10) to that effect. The applicant entered the witness box and gave evidence reiterating that on 7.3.2009 he had seen the non-applicant in the Court premises and he had informed her that the matter is in the Court of learned 3rd Jt. Civil Judge, Senior Division, Nagpur, situated at 4th floor.

5. After examining the impugned order, I find that the learned District Judge has not considered the evidence of the applicant on the point and the conduct of the non-applicant in not entering the witness box to enable the applicant to cross-examine her. Be that as it may, as Shri Nafde, the learned Advocate for the non-applicant has submitted that the non-applicant is willing to enter the witness box, in my view, opportunity is required to be given to the parties to establish their case. Hence, the following order.

ORDER

- (i) The impugned order is set aside.
- (ii) The learned District Judge shall permit the non-applicant to lead evidence. The applicant shall be permitted to cross-examine the witness/witnesses which would be examined on behalf of the non-applicant.
- (iii) The learned District Judge shall pass orders on the application filed by the non-applicant praying for condonation of delay after recording the evidence.
- (iv) The parties shall appear before the learned District Judge-6, Nagpur on 27.2.2015 at 11:00 a.m. and abide by the further instructions/orders in the matter.
- (v) The civil revision application is allowed in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE